



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Solano Garbage Company

File: B-222931.2

Date: July 22, 1986

DIGEST

Protest that in a prebid opening conversation with another bidder, a government employee improperly may have disclosed certain bidding information is denied where the contracting agency maintains that the subject matter of the conversation concerned only the administration of an existing contract, and the protester has not shown otherwise.

DECISION

Solano Garbage Company protests a government employee's alleged improper disclosure of bidding information to another bidder under invitation for bids (IFB) No. F04626-86-B-0003, issued by the Department of the Air Force for refuse collection at Travis Air Force Base, California. We deny the protest.

Just before bid opening, a Solano employee overheard a conversation between a government employee and the other bidder. The government employee is alleged to have said, "the boxes at the hospital would only have to be emptied once a day" and "you are 38 tons to the good." Solano contends that the conversation was improper for two reasons. First, the IFB requires the contractor to empty the hospital boxes twice a day and Solano submitted its bid on that basis. Second, the 38-tons comment indicates, according to Solano, that the government employee knew the contents of one of the bids before bid opening.

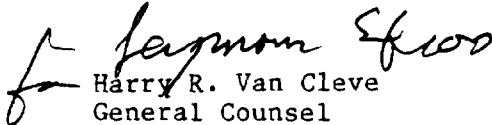
The Air Force admits that the conversation occurred substantially as alleged by Solano. However, the Air Force reports that the conversation concerned the administration of an existing contract with the bidder, not the IFB, and has submitted statements by the government employee and a military witness to the conversation to this effect. According to the statements, a new fast food restaurant was generating refuse at the base which had to be collected. The incumbent thought that the government would have to cut back service at another site to make pickups at the restaurant possible, and the government employee pointed out that unlike in the pending procurement, the incumbent's contract did not require two pickups at the hospital. The 38-tons comment, the statements indicate, referred to extra service the incumbent had provided on base-wide dumpster pickups which placed the incumbent 38 tons ahead on its current contract.

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When improper conduct by government employees is alleged, the protester has the burden of proof, and our Office will not rely on inference alone to find such misconduct. Hayes International Assocs., B-220471, Jan. 3, 1986, 86-1 C.P.D. ¶ 8. Solano contends that it has carried its burden by submitting a sworn statement concerning the conversation, arguing that its sworn statement deserves more weight than the unsworn statements offered by the Air Force, and that we therefore should disregard the Air Force's statements.

Solano's statement, however, does not conflict with the Air Force's, because the Solano statement does not address the question of whether the subject matter of the conversation was the pending procurement or an existing contract. Moreover, although we can understand why Solano might draw the inferences it does, since the words used in the conversation certainly could apply to the IFB and since the conversation took place just before bid opening, the Air Force's explanation of the conversation certainly is as reasonable. The protester has the burden of proof and, in our view, the inference Solano draws from what was said--that the conversation necessarily and improperly concerned the pending procurement--is insufficient to establish the alleged impropriety. Hayes International Assocs., B-220471, supra.

The protest is denied.


Harry R. Van Cleve
General Counsel